IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 30TH JANUARY 2007 / 10TH MAGHA 1928

Crl.Rev.Pet.No. 173 of 1999

CC.329/1992 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOTTARAKKARA
CRA.84/1996 of SESSIONS COURT, KOLLAM

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REVN. PETITIONER/ APPELLANT/ ACCUSED:

OMANA, W/O. KRISHNAN,
PADINJATTATHIL VEEDU,
S.N. PURM, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA, KOLLAM.

BY ADV. SRI.M.K.CHANDRA MOHANDAS
SRI.C.S.MANILAL

RESPONDENTS/ RESPONDENTD/COMPLAINANT:

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1. THE STATE OF KERALA, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. AMMINI, W/O.YESUDASAN,
KALLUTHUNDIL KIZHAKKETHIL VEEDU,
S.N. PURAM, PAVITHRESWARAM VILLAGE,
KOTTARAKKARA, KOLLAM.

BY ADV. SRI.N.UNNIKRISHNAN
PUBLIC PROSECUTOR SRI. K.A. AKBAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 30/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

Crl.Rev.Pet.No.173/1999

Order on Crl.M.P.No.622/1999 in Crl.R.P.No.173/1999

Dismissed.

30.01.2007 Sd/- K. HEMA, JUDGE.

// True Copy //

P.A. to Judge.

smp

K. HEMA, J.

CRL. R.P. No.173 OF 1999

Dated this the 30th day of January, 2007.

O R D E R

The revision petitioner was convicted and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.4,500/- in default of payment of fine to undergo simple imprisonment for six months under Section 326 of Indian Penal Code. She was also convicted and sentenced under Section 323 of I.P.C to pay a fine of Rs.500/- in default of payment of fine to undergo simple imprisonment for one month. The entire fine amount was directed to be paid to PW1 as compensation, if recovered, under Section 357(1) of the Code of Criminal Procedure. The said conviction and sentence are challenged in this revision.

2. According to the prosecution, on 14.12.1991 at about 8.30 a.m PW1 went to purchase milk from the tea shop conducted by PW2. The petitioner was taking tea from the tea shop and on seeing PW1, she rushed to her and asked her whether she would go for cinema with her husband and stating this she beat her on the left cheek. PW1 sat down while the accused took a glass, broke the same and inflicted injury on the eyebrow of the left eye of PW1 by hitting with the said weapon. PW1 sustained a bleeding injury. PW3 her son and others rushed to the scene from their house. She was taken to the hospital and examined by PW7 who issued Exhibit P3, wound certificate. She was referred to PW5, an eye specialist,

who treated PW1 and the case sheet is Exhibit P1. PW1 was also treated by PW6 at Opthalmic hospital, Thiruvananthapuram who proved Exhibit P2 certificate.

3. According to the prosecution, no case was registered on the basis of the statement given by PW1 to the police and hence she gave a complaint to the Circle Inspector. Even thereafter there was no response and hence she was forced to file a private complaint.

4. To prove the prosecution case, PWs 1 to 7 were examined and Exhibits P1 to P3 were marked. On the side of the accused, DW1 was examined.

5. On an analysis of the evidence adduced by both sides, the trial court found that the prosecution established that the incident occurred as alleged by the prosecution. Though there was some discrepancies in the evidence regarding the place of occurrence, the nature of injury, the weapon used, delay etc., those were treated as not fatal to the prosecution. It was found that PW1 lost her eyesight because of the injury sustained consequent to the attack made by the accused on PW1 with a glass. It was found that PW1 was beaten with hand by the accused. The lower appellate court concurred with the finding of the trial court that the discrepancies are not fatal to the prosecution.

6. On an analysis of the evidence in detail and on a reading of the judgment of both the courts, I do not find any reason to interfere with the concurrent findings of fact. A revisional court can interfere with findings of

facts only if the findings are perverse. No perversity, illegality or impropriety can be noted in the concurrent findings entered into by both the courts.

7. Learned counsel appearing for the revision petitioner vehemently contended that there is discrepancy in the place of occurrence. While both the courts admit that there is some discrepancy in the evidence of PWs 1 to 3, the injured and the eye witnesses, regarding the exact spot at which the incident occurred, both the courts found that those discrepancies are not material. According to learned counsel appearing for the revision petitioner, place of occurrence is of vital importance as far as a criminal case is concerned and the discrepancy cannot be treated as minor or light.

8. It is true that the place of occurrence in a criminal case is of great significance and there must be consistency with respect to the place of occurrence in the evidence. But, as the records reveal, this is not a case where there is complete shifting of place as per the evidence adduced in this case. The complaint and the evidence given by witnesses would disclose that, as per the prosecution case the incident occurred in and around the shop of PW2. PW1 had gone to fetch milk and the accused had come to take tea. The difference in the evidence regarding the exact spot with reference to the distance from a particular point cannot therefore be said to be material as held by the courts below. It is only if there is substantial material difference in the place of occurrence that the court can take serious note of it. In this case, the evidence of PWs 1 to 3 or the

evidence adduced by the prosecution through other witnesses will not cast any reasonable doubt in respect of the fact that an incident as alleged had taken place, in and around the tea shop of PW2.

9. Learned counsel appearing for the revision petitioner also submitted that the presence of PW3 is doubtful. He pointed out that, in the complaint PW1 has no case that PW3 had come to the tea shop along with her. But, in the evidence PW1 stated that PW3 had also accompanied her to the tea shop while she had gone to buy milk. It is needless to say that the evidence given in the court is the substantive evidence and any previous statement made by a witness can be used only for corroborating or contradicting the evidence. But, no attempt was made by the defence to bring out through the evidence of PW1 regarding the alleged contradiction in the evidence of PW1 and the statement made by her in the complaint. It can also be noted that PW1 has a definite case in the complaint itself that PW3 was a witness to the occurrence. Though the fact that PW3 had accompanied her has not been specifically stated in the complaint, that mere omission may not be fatal, unless she has been given an opportunity to explain the alleged omission in the complaint, which may amount to a contradiction, if any. In the above circumstances, the alleged omission in the complaint regarding the presence of PW3 along with PW1 is of no significance.

10. Learned counsel appearing for the revision petitioner also argued that there is discrepancy with respect to and contradiction with respect to

the manner in which PW1 was attacked. That is, in relation to the exact spot from where she was attacked. It was also pointed out that while PW1 stated that she was beaten with a glass, PW2 has given evidence that she was beaten with a broken glass. But, here again PW1 was not confronted with her earlier statement in the complaint regarding the manner in which the glass was used in the attack.

11. It was also argued that there is delay in filing the complaint and this is also fatal to the prosecution case. It has come out from the evidence, particularly that of PW7 and Exhibit P3, that PW1 was referred to the hospital by the police. It is seen recorded in Exhibit P3 that she was referred by a Head Constable. Therefore, this is not a case where the complainant did not make any allegation at the earliest point of time to the police. It has also to be noted that, she made an allegation at the earliest point of time to the doctor also, as revealed from the evidence of PW7 and Exhibit P3, the alleged cause of injury was beating with glass. Therefore, it is not a new case which has been developed by PW1 at a belated stage for the mere sake of filing a complaint. There is nothing to doubt the veracity of the prosecution case by the alleged delay in filing the complaint. PW1 had a definite case that the police did not take any action in spite of the fact that she had sustained injury and she was referred to the doctor and hence it is only natural that she would wait until a private complaint is filed, since remedies with the police exhaust.

12. Learned counsel appearing for the revision petitioner also attacked the medical evidence. It was argued that, as per the medical evidence given by PW7, PW1 had no injury on the eye. PW7 admitted in cross examination that there was no injury to the eye, but the injury was lacerated injury on the eyebrow. From this evidence it was argued that the loss of her sight cannot be connected to the injury sustained in the alleged incident. It is true that PW7 did not specifically state that there was an injury to the eye. But, he admitted that PW1 was referred to an eye hospital. If there was no injury affecting the eye, there is no reason why PW1 should be referred to an eye specialist for management and treatment.

13. If it was only an ordinary laceration of an eyebrow, PW7 who was working as a Civil Surgeon in the Govt. Taluk Hospital would have been able to manage the injury and there was absolutely no necessity to refer the patient to an eye specialist. This circumstance of referring the patient to an eye specialist itself is sufficient to conclude that PW1 had suffered an injury to the eye which needed special care by the specialist. It can be seen from the evidence of PW5 that he was working in the same hospital during the relevant time and that PW1 was referred to him on the very next day. He also stated that PW1 continued treatment as an inpatient in the same department and thereafter she was referred to Opthalmic hospital, Thiruvananthapuram on 01.01.1992. PW1 was treated as an inpatient in the opthalmic department in the same hospital since the very next day of the incident as referred to by PW7 himself who stated that she had no injury

to the eye. In the above circumstances, I find that in the light of the medical evidence and the circumstance of referring PW1 to opthalmic department for specialist's treatment, the argument advanced that there was no injury to the eye as consequent to the attack made is not acceptable. On going through both the judgments, I find that the courts below have not committed any illegality or impropriety in the findings entered. The findings do not suffer from any perversity and no interference is called for.

Learned counsel appearing for the revision petitioner submitted that interference may be made in respect of the sentence. On going through the sentence imposed, I find that the sentence of simple imprisonment for one month and pay a fine of Rs.4,500/- under Section 326 I.P.C in a case where there is medical evidence to show that the injured lost her eyesight at the age of 40 years is too low and is not proportionate to the gravity of offence. The sentence imposed for offence under Section 323 I.P.C is also only a fine of Rs.500/-. According to me, undeserved leniency has already been shown in this case. Hence, I do not find any reason to interfere with the sentence imposed in this case.

This revision petition is dismissed.

K. HEMA, JUDGE.

smp